

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Byron Martin,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:05-CV-28
	:	
Paul Brosseau, Keith	:	
Tallon, Ellen McWard,	:	
Michael Foisy, James	:	
Kamel, Stephen Lavoie,	:	
Dustin Warburton, Keith	:	
Reilly, Richard Bess,	:	
Sue James, Trina Nutter,	:	
Celeste Girrell, Kevin	:	
Oddy and Bernadette	:	
Dewing,	:	
Defendants.	:	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Papers 107, 110 and 115)

Plaintiff Byron Martin, a Vermont inmate proceeding *pro se*, claims that his treatment while in prison has been constitutionally deficient. Currently pending before the Court are a series of motions pertaining to discovery and other pre-trial matters. The first is Martin's motion for a pre-trial hearing or trial (Paper 107). Since filing his motion, however, Martin has submitted a stipulated discovery order that allows for discovery through May 1, 2008. His motion for a pre-trial hearing or trial is thus premature and is DENIED.

The next pending motion is the defendants' motion to

dismiss (Paper 110), based upon Martin's failure to submit a stipulated discovery order within the time period set by the Court. Although the stipulated discovery order was not filed by the parties in a timely manner, there is no evidence that any party was prejudiced by the brief delay. The Court has signed the stipulated discovery order, and there is no longer any basis for dismissal under Fed. R. Civ. P. 41. I therefore recommend that the motion to dismiss be DENIED.

Finally, the defendants have moved to strike a portion of the stipulated discovery order. The provision in question requires initial disclosures and Early Neutral Evaluation ("ENE"), and was reportedly added by Martin without the consent of opposing counsel. The defendants contend that this case, commenced while Martin was incarcerated, is exempt from both requirements.

Under Fed. R. Civ. P. 26(a)(1)(B)(iv), actions brought *pro se* by persons who are in state custody are exempt from initial disclosures. The fact that Martin was released from prison three years into this litigation does not impact this exemption. With respect to ENE, Local Rule 16.3(b)(1) does require ENE for prison

conditions cases. Accordingly, the defendants' motion for relief (Paper 115) is GRANTED.

Dated at Burlington, in the District of Vermont,
this 20th day of February, 2008.

/s/ Jerome J. Niedermeier
Jerome J. Niedermeier
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).